

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

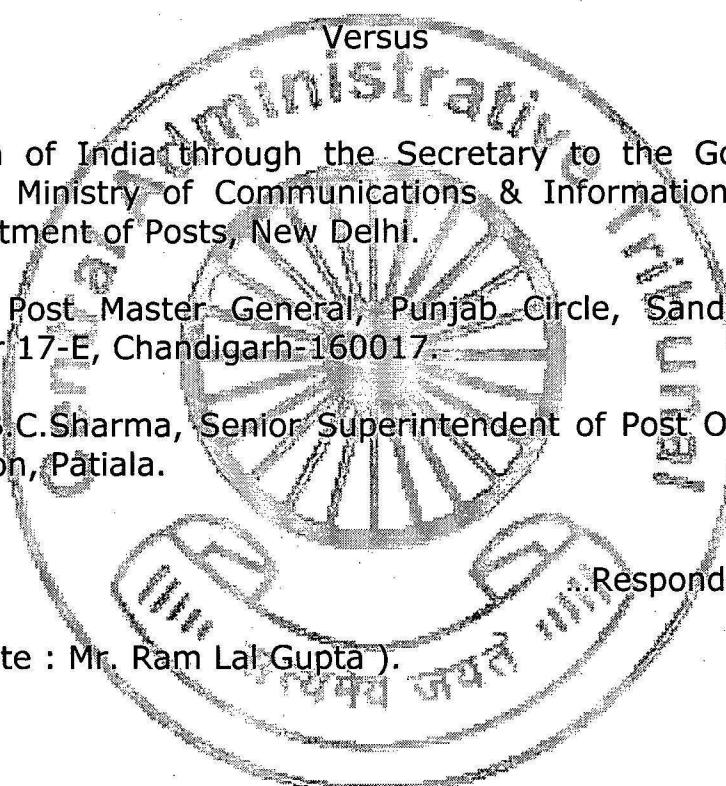
O.A.NO. 060/00133/2014 Date of order:- July 25 , 2016.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Om Parkash s/o Sh. Mangat Ram, GDS(put off duty), Mandaur, S.O. Nabha, District Patiala, r/o Vand PO Allowal, District Patiala.

.....Applicant.

(By Advocate :- Mr. Rohit Seth)



1. Union of India through the Secretary to the Government of India, Ministry of Communications & Information Technology, Department of Posts, New Delhi.
2. Chief Post Master General, Punjab Circle, Sandesh Bhawan, Sector 17-E, Chandigarh-160017.
3. Sh. B.C.Sharma, Senior Superintendent of Post Offices, Patiala Division, Patiala.

.....Respondents

(By Advocate : Mr. Ram Lal Gupta).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Om Parkash has filed the present Original Application, praying for the following reliefs:-

"i) Quash the charge-sheet dated 3.6.2010(Annexure A-1) by which applicant has been levelled with frivolous allegations which cannot be sustained in the eyes of law;
ii) Quash enquiry report dated 17.11.2011 (Annexure A-2) by which enquiry officer had proved the charges against applicant ignoring the evidence on record, in violation of rules and law and in utter disregard to the procedure to be followed for conduct of enquiry proceedings;

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iii) Quash the order dated 5.1.2012 (Annexure A-3) by which disciplinary authority has imposed the harshest penalty of dismissal upon applicant without application by mind and ignoring the grounds raised by applicant in his representation against the enquiry report;

iv) quash the order dated 29.8.2012(Annexure A-4) by which Appellate authority modified penalty to removal without application by mind and ignoring the grounds raised by applicant in his appeal;

v) Quash the order dated 28.3.2013(Annexure A-5) by which revisionary authority upheld the penalty of removal imposed upon applicant without application by mind and ignoring the grounds raised by applicant in his revision".

2. Facts as presented by the applicant are that the applicant joined the respondent department as Extra Departmental Branch Postmaster on 8.8.1991 in Post Office of S.O. Nabha, District Patiala, and continued to work till 24.7.2009 when the charge of the said post was taken from him and given to another Extra Departmental Runner namely Shri Mohan Singh. Against the said action of the respondent department, the applicant made a representation dated 29.9.2009. Thereafter, the applicant was put off duty from 1.10.2009 vide order dated 15.10.2009 under Rule 12 of the Gramin Dak Sewak (Conduct & Employment) Rules, 2001. On 22.10.2009, the respondents paid the ex.gratia payment equal to 25% of his time related continuity allowance together with DA for the period the applicant remained put off duty. Feeling aggrieved against the said order, the applicant submitted an appeal on 9.11.2009. The respondents revoked the order dated 15.10.2009 whereby the applicant was put-off from duty vide order dated 2.12.2009. After revocation of put-off duty order, the applicant submitted his joining report on 5.12.2009, but he was not allowed to join his duties, rather, he was again put-off duty on 9.12.2009. The applicant again submitted an appeal on 22.12.2009.

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3. Feeling dissatisfied with the put-off duty order, the applicant approached the Tribunal by filing O.A.No.476/PB/2010. During the pendency of the OA, the applicant was issued memorandum dated 3.6.2010 wherein two article of charges namely misappropriated an amount of Rs.3581/- temporarily for the period from 9.7.2009 to 21.7.2009 and failed to exhibit devotion to duty during his presence, have been levelled against the applicant. The said OA was disposed of vide order dated 15.4.2011 with a direction to the Inquiring Authority to conclude the inquiry against the applicant, within one month from 3.5.2011. The Inquiry Officer submitted the enquiry report on 17.11.2011 wherein the applicant was held guilty. On the basis of the enquiry report, the applicant was dismissed from employment/engagement vide order dated 5.1.2012. Against the dismissal order, the applicant filed an appeal dated 24.2.2012 under Rule 13 of the GDPS Rules. The Appellate Authority also dismissed the appeal filed by the applicant, but the punishment of dismissal from employment was modified to that of removal from employment, vide order dated 29.8.2012. Thereafter, the applicant filed a revision petition which too was dismissed vide order dated 28.3.2013 by confirming the penalty of removal from engagement. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the applicant while working as GDS BPM Mandaur BO misappropriated public money tendered for deposit in recurring deposit account No.149507, as such, he was charge-sheeted under Rule 10 of the GDS(C&E) Rules, 2001 and as a result of disciplinary proceedings, a penalty of debarring him from appearing in the Departmental examination for the post of Postman for a period of 3 years was

awarded vide memo dated 22.1.2008. Again, the applicant had misappropriated an amount of Rs.3581/- temporarily by taking money from Smt. Gurmail Kaur against rural postal life insurance on 9.7.2009, but did not credit the said amount into government accounts and pocketed the same for his personal use. When an enquiry was made on 24.7.2009 by the concerned Assistant Superintendent of Post Offices (ASP) Patiala, the applicant fled away and did not turn up till 1600 hrs. Thereafter, the applicant was treated as absent from duty and the charge of Mandaur BO was given to Shri Mohan Singh, GDSMC and the applicant was placed under put off duty vide memo dated 15.10.2009 due to contemplation of disciplinary proceedings under Rule 10 of the GDS(C&E) Rules, 2001. The applicant did not cooperate in the enquiry proceedings during the course of investigation. Finally, the Inquiry Officer concluded the enquiry and held the applicant guilty of the charges levelled against him. The respondents have thus prayed for dismissal of the OA.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. During the course of arguments, the learned counsel for the applicant raised several issues. He submitted that the proper procedure for conducting the enquiry was not followed in this case. Further, he stated that the Inquiry Officer has not appreciated the statement of witnesses correctly and in particular, he drew our

attention to the statements made by the complainant Smt. Gurmail Kaur, who was the most important and key witness and whose evidence was full of contradictions. He also pointed out to us that he was not handed over the copy of two very important documents namely the copy of statements of two witnesses namely Smt. Shashi Chopra and Shri Sham Karan.

8. In view of the above, he argued that the enquiry process was vitiated on account of procedural lapses. The learned counsel for the applicant also drew our attention to an earlier order of the Tribunal where the respondents were directed to complete the enquiry within a period of one month. This order was passed on April 15, 2011. However, the enquiry was completed much later and the enquiry report was submitted on 1.11.2011. In the opinion of the learned counsel for the applicant, this delay has vitiated the whole enquiry process and, therefore, the enquiry report and all subsequent decisions based on this enquiry report deserve to be set aside.

9. Another argument put-forth by the learned counsel for the applicant focused on excessive and disproportionate punishment upon the applicant. It was the contention of the applicant that the punishment of dismissal, which was modified as removal by the appellate authority, was excessively harsh and disproportionate to the misconduct, which only amounted to keeping small amount of money with him for a few days. In view of this, the applicant, if at all, deserves much lesser punishment than the ultimate punishment of removal from service.

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10. On the other hand, the learned counsel for the respondents stated that they have rebutted each of the grounds taken by the applicant in his OA through their written statement. It was the contention of the learned counsel for the respondents that there is a clear admission of misconduct by the applicant. But even then, the enquiry has been conducted exhaustively, giving full opportunity to the applicant and the procedure of enquiry does not suffer from any defects or defaults. He also submitted that the applicant has even in the past been also debarred from appearing in the Limited Departmental Examination for the post of Postman for a period of three years. This punishment was granted to the applicant in 2008 which was accepted by him. The learned counsel for the respondents further argued that the scope of interference by the Tribunal in the matters of departmental enquiry is limited and the evidence placed before the Inquiry Officer cannot be opened for fresh appreciation or interpretation. As regards non-supply of documents to the applicant, the learned counsel for the respondents has submitted that the applicant was given full opportunity to cross examine these two witnesses and, therefore, there was no necessity to provide the copies of earlier statements to the applicant. Further submitted that the each and every point concerned with the alleged lapse in procedure of enquiry has been extensively dealt with by the Inquiry Officer as well as the Appellate Authority.

11. On the issue of delay in conducting the enquiry, the learned counsel for the respondents has stated that the delay was largely due to non co-operation of the applicant in conducting the enquiry. He further added that on one occasion, when the Inquiry Officer had gone to conduct the enquiry, the applicant had fled away

from that place. The punishment meted out to the applicant, according to the respondents, was fully justified.

12. We have gone through the record. It is clear from the perusal of the enquiry report, the orders of the Disciplinary Authority, Appellate Authority and Revisional Authority that the points raised by the applicant have been extensively dealt with in the respective orders. We are, after perusing the record and listening to the rival parties, of the view that there is no significant defect in the process of the enquiry followed by the respondents and there has been no dilution in giving full opportunity to the applicant to defend his case during the course of enquiry notwithstanding the fact that there is evidence that the applicant had tried to run away from the enquiry at times. The arguments of the applicant with regard to discrepancy in the evidence given by Gurmail Kaur as also about not making available the statements of Smt. Shashi Chopra and Sh. Sham Karan, have been satisfactorily dealt with in the written statement of respondents.

13. There are large numbers of judgments on the issue by the Apex Court as well as by the several High Courts that define the scope of interference by the Courts/Tribunals in the matter of disciplinary enquiries. In most of these rulings, it was held that unless there is a substantial compromise made in the enquiries by the Inquiry Officer, grossly wrong appreciation of the evidence during the process of enquiry, the Tribunal should desist from interfering in such matters. Further, these judgments hold that intervention in such matters can take place only when the punishment awarded is excessively harsh and grossly disproportionate to the nature of misconduct. Here is a case where the charge is of financial mis-appropriation and this type of mis-appropriation of government money cannot be taken lightly.

14. At the time of final hearing, learned counsel for the applicant has placed before us a copy of judgment passed by the Hon'ble Apex Court in the case of **N.K.Illiyas versus State of Kerala** decided on 12.7.2011 in which it has been held that temporary embezzlement of government money is no offence. The facts of this case are that one Shri N.K.Illiyas stood convicted for offences punishable under Sections 13(1) (c) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and under sections 409, 471 and 477A of the Indian Penal Code. The allegation is that while he was working as a Lower Division Clerk in the office of the Deputy Superintendent of Police in the Vigilance Department, on the 6th of June, 1989, he had temporarily misappropriated an amount of Rs.1,839/- being the telephone dues from 10th February, 1992 to 4th March, 1992 and that he had interpolated the records to show that the aforesaid amount had been remitted to the post office on the 10th of February, 1992, whereas the payment had actually been made in the post office on the 4th of March, 1992, that is after a delay of 21 days. The trial court and the High Court have, accordingly, convicted the appellant under Sections 13 (1) (c) and 13 (1) (d) and have directed him to undergo two years imprisonment and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for three months under Section 13 (2) of the Act for the offences punishable under Section 3 (1) (c) and (d) of the Act, six months rigorous imprisonment under Section 471 Indian Penal Code and one year's rigorous imprisonment under Section 409 Indian Penal Code; all the sentences to run concurrently. The Hon'ble Supreme Court has held that "We are further of the opinion that the offences under the Indian Penal Code alleged against the appellant are so trivial and have caused no harm and are in fact no offences in the eye of the law and the benefit of

Section 95 of the Indian Penal Code is thus available to the appellant. Admittedly, a sum of Rs.1839/- had been deposited in the post office before the due date i.e. 4th March, 1992 and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record to show the payment on the 10th February, 1992".

15. A close reading of this judgment reveals that there are significant differences between above case and the case which is before us for adjudication. First of all, in the aforementioned case the conduct of the appellant was being adjudged in the light of provisions of IPC and Prevention of Corruption Act while the context in the case before us is a punishment in the context of Departmental Proceedings.

16. In the case before Apex Court, the conviction was under IPC and Prevention of Corruption Act, while here the applicant has been proved guilty under a departmental proceedings. In the case before Supreme Court, a sum of Rs.1859/- was to be deposited before 4.3.1992, the LDC had received this amount on 10.2.1992, but he chose to keep it with him for some time. It was held by Supreme Court that the offence under Indian Penal Code against the LDC are so trivial and have caused no harm. But in the instant case, the nature of the job of the applicant is to accept money from the public and deposit the same on the same day in the account of the depositor. There is no such contingency where he accepts the money on one day, keep it for some-time with him and then decides to deposit the same in the account of the depositor on a subsequent date chosen by him. This liberty is not available to the applicant, and therefore, such a conduct cannot be considered a trivial matter. The conduct of the applicant in keeping the money received from the members of public is a serious

breach of trust and faith that people depose in the postal services of the country. The person who deposits the money remains assured that the same has been deposited in his or her account on the very same day it was given to the concerned postal official. Therefore, in our view, to seek a parity between the aforesaid case before the Apex Court and the present case will not be appropriate and, thus, need not apply in the instant case. 43

17. We have seriously considered the question whether the punishment imposed on applicant is excessive or disproportionate? We can not overlook the fact that on an earlier occasion, the applicant was found guilty of keeping the money given to him for depositing in the Recurring deposit account of an individual, as it was retained by him and not deposited. He was, on this occasion, given the punishment of debarment from appearing for the post of Postman, a punishment that the applicant eventually accepted. In the instant case, the charge is of embezzlement of public money though for a short period of time. Notwithstanding the duration, in our view, it is a serious offence for a government servant, entrusted with the task of accepting public money and depositing it faithfully in the relevant accounts. It does not matter whether the amount is meager or large.

18. Further Rule 9 of the GDS(Conduct & Employment) Rules, provides the following punishments upon the GDS :-

"9. Nature of penalties

- (i) Censure;
- (ii) Debarring of a Sevak from appearing in the recruitment examination for the post of Postman and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding three years;
- (iii) Debarring of a Sevak from being considered for recruitment to Group 'D' for a period not exceeding three years;

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- (iv) Recovery from Time Related Continuity Allowance of the whole or part of any pecuniary loss caused to the government by negligence or breach of orders;
- (v) Removal from employment which shall not be a disqualification for future employment;
- (vi) Dismissal from employment which shall ordinarily be a dis-qualification for future employment".

19. Having been punished with a debarment in the past, a recurring offence when proved, naturally invites a harsher and more stringent punishment, and this seems to be the case presently.

Therefore, In view of this, we feel that the punishment awarded to the applicant is neither excessive nor it is disproportionate. Even the Hon'ble Apex Court in the case of **Regional Manager, U.P.S.R.T.C. Etawah & Ors. Vs. Hoti Lal & Another** (2003(2) J.T. Page 27)

where the State had suffered only a loss to the tune of Rs.16/- on account of the fact that conductor was carrying ticketless passengers and certain old and used tickets were found from his possession, the Hon'ble Court has held that " It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning. It would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable".

20. The Hon'ble Apex Court in the case of **S.R.Tewari versus Union of India** (2013(7) Scale Page 417) has reiterated that "The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by

replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

21. Recently, the Hon'ble Apex Court in the case of **Union of India versus P.Gunasekaran** (2015 (2) S.C.C. Page 610) in paras 12, 13 & 20 has held as follows :-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

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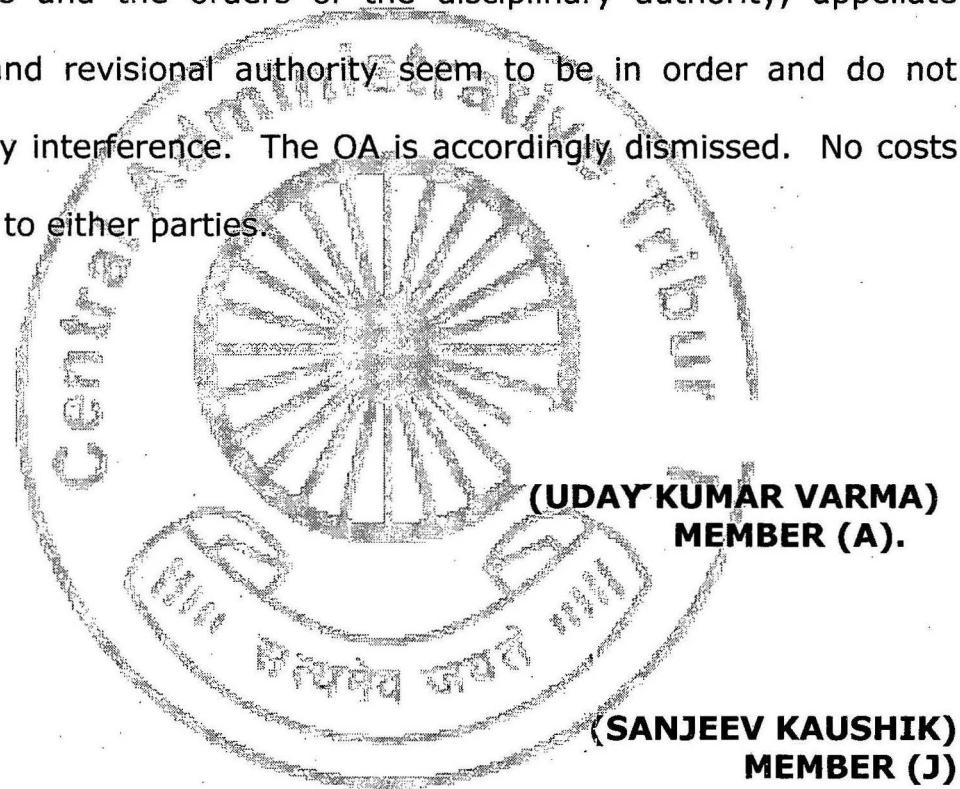
19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanliness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

The guidelines enunciated in the judgment above are as relevant and useful for adjudication of Departmental Proceedings in Tribunals as they are for High Courts. If we consider the guidelines laid down by the Hon'ble Apex Court in the case of P.Gunasekaran (supra), we cannot fail but conclude that the instant case does not merit any

interference by us as no aspect of this case qualifies for an intervention by the Tribunals. In the instant case, the enquiry has been conducted by following due process of law, there are no procedural lapses or irregularity and the principles of natural justice are not violated in any manner. 47

22. Given the facts and the relevant particulars of this case, as discussed in the preceding paragraphs, we are not inclined to intervene in this matter. In our view, the enquiry conducted by the respondents and the orders of the disciplinary authority, appellate authority and revisional authority seem to be in order and do not deserve any interference. The OA is accordingly dismissed. No costs is awarded to either parties.



Dated:- July 25 , 2016.

Kks